

## **U.S. Department of Education Clarifies the Relationship Between Title IX and the Membership Practices of Social Fraternal Organizations**

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On December 16, 2014, the U.S. Department of Education issued a letter clarifying the role of Title IX of the Education Amendments of 1972<sup>1</sup> (“Title IX”) on the membership practices of social fraternal organizations and on, specifically, the issue of transgender membership.

In requesting the letter, Campus Pride sought to dispel misconceptions about Title IX and about the U.S. Department of Education's involvement in the membership practices of fraternal organizations, as well as to support the conversation already occurring within fraternal organizations regarding transgender membership. Over several weeks, Campus Pride's Lambda 10 Project, through Shane Windmeyer and Doug Case, worked closely with attorney consultant Stevie Tran, who specializes in this area of the law, in drafting the initial request for clarification from the U.S. Department of Education. On November 21, 2014, the letter was submitted to U.S. Department of Education Assistant Secretary for Civil Rights, Catherine Lhamon.

The U.S. Department of Education's letter directly refutes the belief that social fraternal organizations that take a stance on the issue of transgender membership will inadvertently violate Title IX and jeopardize their status as single-sex, private organizations. The U.S. Department of Education makes clear that, as long as a fraternal organization meets the express requirements of Title IX, “its membership practices are exempt from Title IX regardless of whether that organization admits transgender students.” The position of the U.S. Department of Education confirms the current interpretation of Title IX and its role on the membership practices of social fraternal organizations, in that Title IX has no role. Further, the U.S. Department of Education:

- Most importantly, reaffirms First Amendment principles and fraternal organizations' right to associate and to determine its membership, including the right to make decisions regarding transgender students.
- Confirms recent interpretations of Title IX and its non-involvement with fraternal organizations' membership practices.<sup>2</sup>
- Creates an immediate need for fraternal organizations to educate its board, staff, and membership on the issue of transgender membership.

Fraternal organizations should continue their conversations and education on this issue. Importantly, fraternal organizations should assert their First Amendment right to association by making clear where their histories, purposes, and values fall on the issue of potential transgender new members, transgender active members, and transgender alumni.

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<sup>1</sup> 120 CONG. REC. 39,993 (1974).

<sup>2</sup> See Stevie V. Tran, Note, *Embracing Our Values: Title IX, The “Single-Sex Exemption,” and Fraternities’ Inclusion of Transgender Members*, 41 HOFSTRA L. REV. 503, 523-27 (2012). See also Stevie V. Tran, *Transgender Membership in Fraternities & Sororities and Title IX*, CAMPUS PRIDE, <http://www.campuspride.org/tools/transgender-membership-in-fraternities-sororities-and-title-ix/>.

